

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

DEREK MORTLAND,

Plaintiff,

vs.

THIND PETROLEUM INC.,

Defendant.

CASE NO.: _____

JUDGE _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES:**

1ST CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of the Americans with Disability
Act of 1990 ("Title III" and "ADA"),
42 U.S.C. §§ 12181 *et seq.*

2ND CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of Ohio Revised Code 4112.02, *et
seq.*

3RD CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of Ohio Administrative Code
4101:1-11, *et seq.*

Plaintiff DEREK MORTLAND Complains of Defendant THIND PETROLEUM INC.,
and alleges as follows:

INTRODUCTION:

1. This is a civil rights action for discrimination against persons with physical disabilities, of which plaintiff is a member of, for failure to remove architectural barriers structural in nature at Defendant's property, a place of public accommodation, thereby discriminatorily denying plaintiff access to, the full and equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services, and accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the Americans with Disability Act of 1990 ("title III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et*

1 *seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.*

2 2. Plaintiff DEREK MORTLAND is a person with physical disabilities who, on or
3 about May 19, 2020, was an invitee, guest, patron, or customer at Defendant's property, which
4 houses a MARATHON gas station and convenience store, located at 1570 Morse Rd., Columbus,
5 OH 43229. At said time and place, Defendant failed to provide proper legal access to the
6 property, which is a public accommodation and/or public facility. The denial of access was in
7 violation of both federal and Ohio legal requirements, and MORTLAND suffered violations of
8 his civil rights to full and equal access and was embarrassed and humiliated.
9

10 **JURISDICTION AND VENUE:**
11

12 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
13 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
14 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
15 nucleus of operative facts and arising out of the same transactions, are also brought under
16 parallel Ohio law, whose goals are closely tied with the ADA, including but not limited to
17 violations of Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11,
18 *et sec.*
19

20 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
21 founded on the facts that the real property which is the subject of this action is located in this
22 district, in the City of Columbus, County of Franklin, State of Ohio and that plaintiffs' causes of
23 action arose in this district.
24

25 **PARTIES:**

26 5. Plaintiff DEREK MORTLAND is a "physically handicapped person," a
27 "physically disabled person," and a "person with physical disabilities." (Hereinafter the terms
28

1 “physically disabled,” “physically handicapped” and “person with physical disabilities” are used
2 interchangeably, as these words have similar or identical common usage and legal meaning.)
3 MORTLAND is a “person with physical disabilities,” as defined by all applicable Ohio and
4 United States laws. MORTLAND requires the use of a wheelchair to travel about in public.
5 Consequently, MORTLAND is a member of that portion of the public whose rights are protected
6 by the provisions of Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative Code §
7 4101:1-11, *et sec.*
8

9 6. Defendant THIND PETROLEUM Inc., an Ohio corporation, is the owner and
10 operator, lessor and/or lessee, or agent of the owner, lessor and/or lessee, of the building and/or
11 buildings which constitute a public facility in and of itself, occupied by the MARATHON gas
12 station and convenience store, a public accommodation, located at/near 1570 Morse Rd.,
13 Columbus, OH 43229, and subject to the requirements of Ohio state law requiring full and equal
14 access to public facilities pursuant to Ohio Revised Code § 4112.02, *et seq.*, Ohio Administrative
15 Code § 4101:1-11, *et sec.*, and subject to the Americans with Disability Act of 1990 (“TITLE III”
16 AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, and to all other legal requirements referred to in this
17 complaint.
18

19 7. At all times relevant to this complaint, Defendant is the lessee, or agent of the
20 lessee, and/or lessor, of said premises, and owns and operates the subject MARATHON gas
21 station and convenience store as a public facility at/near 1570 Morse Rd., Columbus, OH 43229.
22 The business, a MARATHON gas station and convenience store, is open to the general public
23 and conducts business therein. The business operating on said premises is a public
24 accommodation subject to the requirements of Ohio Revised Code § 4112.02, *et seq.* and Ohio
25 Administrative Code § 4101:1-11, *et sec.*
26
27
28

1 8. At all times relevant to this complaint, Defendant is the landlords/lessors,
 2 tenants/lessees and the owners and operators of the subject facility, a public accommodation
 3 located at/near 1570 Morse Rd., Columbus, OH 43229. As such, Defendant is jointly and
 4 severally responsible to identify and remove architectural barriers pursuant to Code of Federal
 5 Regulations section 36.201(b), which states in pertinent part:
 6

7 **§ 36.201 General**

8 (b) Landlord and tenant responsibilities. Both the landlord
 9 who owns the building that houses a place of public
 10 accommodation and the tenant who owns or operates the place of
 11 public accommodation are public accommodations subject to the
 12 requirements of this part. As between the parties, allocation of
 responsibility for complying with the obligations of this part may
 be determined by lease or other contract.

13 CFR §36.201(b)

14 9. Plaintiff does not know the true names of Defendant, its business capacities, its
 15 ownership connection to the property and business, nor their relative responsibilities in causing
 16 the access violations herein complained of. Plaintiff is informed and believes that the Defendant
 17 herein is a public accommodation, and is the agent, ostensible agent, master, servant, employer,
 18 employee, representative, franchisor, franchisee, partner, and associate, or such similar capacity,
 19 of each of the other defendants, if any, and was at all times acting and performing, or failing to
 20 act or perform, within the course and scope of his, her or its authority as agent, ostensible agent,
 21 master, servant, employer, employee, representative, franchiser, franchisee, partner, and
 22 associate, or such similar capacity, and with the authorization, consent, permission or ratification
 23 of each of the other defendants, and is responsible in some manner for the acts and omissions of
 24 the other defendants in legally causing the violations and damages complained of herein, and
 25 have approved or ratified each of the acts or omissions of each other defendant, as herein
 26
 27
 28

described.

PRELIMINARY FACTUAL ALLEGATIONS:

10. Defendant is the entity that is a public accommodation that owns, leases (or leases to), or operates a, MARATHON gas station and convenience store, located at 1570 Morse Rd., Columbus, OH 43229. MARATHON gas station and convenience store and each of its facilities are places “of public accommodation” subject to the requirements of the Americans with Disability Act of 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.* On information and belief, said facility has undergone “alterations, structural repairs and additions,” each of which has subjected the MARATHON gas station and convenience store to handicapped access requirements.

11. Plaintiff DEREK MORTLAND is a person with a disability. MORTLAND is a “physically disabled person,” as defined by all applicable Ohio and United States laws. MORTLAND is paralyzed as a result of a motorcycle accident and requires the use of a wheelchair for mobility and to travel in public.

12. At all times referred to herein and continuing to the present time, Defendant advertised, publicized and held out the MARATHON gas station and convenience store as being handicapped accessible and handicapped usable.

13. On or about May 19, 2020, MORTLAND was an invitee and guest at the subject MARATHON gas station and convenience store, arriving for purposes of obtaining fuel.

14. Upon his arrival, during his patronizing of the public accommodation, and upon his exit of the facility, MORTLAND personally encountered architectural barriers which denied him the full and equal access to the property.

1 15. Therefore, at said time and place, MORTLAND, who is a person with disabilities,
2 encountered the following inaccessible elements of the subject MARATHON gas station and
3 convenience store which constituted architectural barriers and a denial of the proper and legally
4 required access to a public accommodation to persons with physical disabilities. By way of
5 example and not as an exhaustive inventory of Defendant's violations, the following barriers to
6 access were personally encountered by plaintiffs:
7

- 8 a. *In the parking lot, there are no accessible parking stalls in violation of 2010*
9 *ADAS Section: 208.2 and 1991 ADAS Section: 4.1.2(5)(a).*
- 10 b. *In the parking lot, there is no access aisle and no accessible parking stall in*
11 *violation of 2010 ADAS Section: 502.3.1, 502.2 and 1991 ADAS Section:*
12 *4.1.2(1).*
- 13 c. *In the parking lot, the access aisle is not a minimum 8 feet to the centerline of the*
14 *stripe in violation of 2010 ADAS Section: 502.2 Exception and 1991 ADAS*
15 *Section: 4.1.2(1).*
- 16 d. *In the parking lot, the van stall is missing a sign identifying it as a van accessible*
17 *stall in violation of 2010 ADAS Section: 502.6 and 1991 ADAS Section: 4.6.4.*
- 18 e. *At the accessible route, the east building entrance is not located on an accessible*
19 *route in violation of 2010 ADAS Section: 206.2.1 and 1991 ADAS Section:*
20 *4.1.2(1).*
- 21 f. *At the accessible route, the west building entrance is not located on an accessible*
22 *route in violation of 2010 ADAS Section: 206.2.1 and 1991 ADAS Section:*
23 *4.1.2(1).*
- 24 g. *At the accessible route, the doormat is not secured in place at the east entry door*
25 *in violation of 2010 ADAS Section: 302.2 and 1991 ADAS Section: 4.5.3.*
- 26 h. *At the accessible route, the doormat is not secured in place at the west entry door*
27 *in violation of 2010 ADAS Section: 302.2 and 1991 ADAS Section: 4.5.3.*
- 28 i. *At the accessible route, there is no accessible route to the propane tanks in*
 violation of 2010 ADAS Section: 206.2.2 and 1991 ADAS Section: 4.1.2(1).
- j. *At the accessible route, the propane tank vending is not accessible because there*
 is not adequate clear floor space for an approach in violation of 2010 ADAS
 Section: 305.3 and 1991 ADAS Section: 4.2.4.1.

1
2 *k. At the accessible route, the paper towel dispenser is not accessible by the gas*
3 *pump because there is not adequate clear floor space for an approach in violation*
4 *of 2010 ADAS Section: 305.3 and 1991 ADAS Section: 4.2.4.1.*

5
6 *l. At the accessible route, the landing on the pull side of the east exterior door is not*
7 *sufficient in violation of 2010 ADAS Section: 404.2.4.1 and 1991 ADAS Section:*
8 *4.13.6.*

9 *m. At the accessible route, the landing on the pull side of the west exterior door is*
10 *not sufficient in violation of 2010 ADAS Section: 404.2.4.1 and 1991 ADAS*
11 *Section: 4.13.6.*

12 On personal knowledge, information and belief, other public facilities and elements too
13 numerous to list were improperly inaccessible for use by persons with physical disabilities.

14 16. At all times stated herein, the existence of architectural barriers at Defendant's
15 place of public accommodation evidenced "actual notice" of Defendant's intent not to comply
16 with the Americans with Disability Act of 1990 ("title III" and "ADA"), 42. U.S.C. §§ 12181 *et*
17 *seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*
18 either then, now or in the future.

19 17. As a legal result of Defendant's failure to act as a reasonable and prudent public
20 accommodation in identifying, removing or creating architectural barriers, policies, practices and
21 procedures that denied access to plaintiff and other persons with disabilities, plaintiffs suffered
22 damages as alleged herein.

23 18. As a further legal result of the actions and failure to act of Defendant, and as a
24 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
25 herein, MORTLAND was denied his civil rights to full and equal access to public facilities.

26 MORTLAND suffered a loss of his civil rights and his rights as a person with physical
27 disabilities to full and equal access to public facilities, and further suffered from personal injury,

28 shame, humiliation, embarrassment, anger, chagrin, disappointment and worry, expectedly and
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 7

1 naturally associated with a person with physical disabilities being denied access, all to his
2 damages as prayed hereinafter in an amount within the jurisdiction of this court.

3 19. On information and belief, construction alterations carried out by Defendant have
4 triggered access requirements under Americans with Disability Act of 1990 (“TITLE III” AND
5 “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio
6 Administrative Code §4101:1-11, *et sec.*
7

8 20. MORTLAND, as described herein below, seeks injunctive relief to require the
9 MARATHON to be made accessible to meet the requirements of both Ohio law and the
10 Americans with Disabilities Act, whichever is more restrictive, so long as Defendant operates
11 and/or leases the MARATHON gas station and convenience store as a public facility. Plaintiff
12 seeks damages for violation of his civil rights, from the date of his visit until such date as
13 Defendant brings the establishment into full compliance with the requirements of Ohio and
14 federal law.
15

16 21. On information and belief, Defendant has been negligent in its affirmative duty
17 to identify the architectural barriers complained of herein and negligent in the removal of some
18 or all of said barriers.
19

20 22. Because of Defendant’s violations, MORTLAND and other persons with physical
21 disabilities are unable to use public facilities such as those owned and operated by Defendant on
22 a “full and equal” basis unless such facility is in compliance with the provisions of the
23 Americans with Disabilities Act and other accessibility law as plead herein. Plaintiff seeks an
24 order from this court compelling Defendant to make the MARATHON gas station and
25 convenience store accessible to persons with disabilities.
26

27 23. Plaintiff is informed and believes and therefore alleges that Defendant caused the
28

1 subject property to be constructed, altered and/or maintained in such a manner that persons with
2 physical disabilities were denied full and equal access to, within and throughout said facility of
3 the MARATHON gas station and convenience store and were denied full and equal use of said
4 public facility. Further, on information and belief, Defendant has continued to maintain and
5 operate said facility in such conditions up to the present time, despite actual and constructive
6 notice to such Defendant that the configuration of the establishment and/or its building(s) are in
7 violation of the civil rights of persons with physical disabilities, such as plaintiff and the
8 disability community. Such construction, modification, ownership, operation, maintenance and
9 practices of such public facilities are in violation of law as stated in Americans with Disability
10 Act of 1990 ("TITLE III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.* and elsewhere in the laws
11 of Ohio.
12
13

14 24. On information and belief, the subject public facility of the MARATHON gas station
15 and convenience store denied full and equal access to plaintiff and other persons with physical
16 disabilities in other respects due to noncompliance with requirements of Ohio Revised Code §
17 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*
18

19 25. On personal knowledge, information and belief, the basis of Defendant's actual
20 and constructive notice that the physical configuration of the facilities including, but not limited
21 to, architectural barriers constituting the MARATHON gas station and convenience store was in
22 violation of the civil rights of persons with physical disabilities, such as plaintiff, includes, but is
23 not limited to, communications with invitees and guests, owners of other establishments and
24 businesses, notices Defendant obtained from governmental agencies upon modification,
25 improvement, or substantial repair of the subject premises and other properties owned by the
26 Defendant, newspaper articles and trade publications regarding the Americans with Disabilities
27
28

1 Act and other access laws, public service announcements, and other similar information.
2 Defendant's failure, under state and federal law, to make the establishment accessible is further
3 evidence of Defendant's conscious disregard for the rights of plaintiff and other similarly
4 situated persons with disabilities. The scope and means of the knowledge of Defendant are
5 within Defendant's exclusive control and cannot be ascertained except through discovery.
6

7 26. Plaintiff will return to the subject MARATHON gas station and convenience store to
8 patronize the facility, if it is made fully accessible to a disabled person in a wheelchair, and to
9 also avail himself of the facility's services.
10

11 27. Furthermore, plaintiff intends to return to the MARATHON gas station and
12 convenience store as an ADA tester on an annual basis beginning in Fall 2020, to ascertain
13 whether Defendant removed the barriers to access which are the subject of this litigation.
14

15 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
16 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
17 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

18 28. Plaintiff pleads and incorporates by reference, as if fully set forth again herein,
19 the allegations contained in paragraphs 1 through 27 of this complaint.

20 29. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
21 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
22 protect:

23 some 43 million Americans with one or more physical or mental
24 disabilities; [that] historically society has tended to isolate and
25 segregate individuals with disabilities; [that] such forms of
26 discrimination against individuals with disabilities continue to be a
27 serious and pervasive social problem; [that] the nation's proper
28 goals regarding individuals with disabilities are to assure equality
of opportunity, full participation, independent living and economic
self-sufficiency for such individuals; [and that] the continuing
existence of unfair and unnecessary discrimination and prejudice
denies people with disabilities the opportunity to compete on an

1 equal basis and to pursue those opportunities for which our free
2 society is justifiably famous.

3 30. Congress stated as its purpose in passing the Americans with Disabilities Act of
4 1990 (42 U.S.C. §12102):

5 It is the purpose of this act (1) to provide a clear and
6 comprehensive national mandate for the elimination of
7 discrimination against individuals with disabilities; (2) to provide
8 clear, strong, consistent, enforceable standards addressing
9 discrimination against individuals with disabilities; (3) to ensure
10 that the Federal government plays a central role in enforcing the
11 standards established in this act on behalf of individuals with
12 disabilities; and (4) to invoke the sweep of Congressional
13 authority, including the power to enforce the 14th Amendment and
14 to regulate commerce, in order to address the major areas of
15 discrimination faced day to day by people with disabilities.

16 31. As part of the Americans with Disabilities Act of 1990, (hereinafter the “ADA”),
17 Congress passed “Title III - Public Accommodations and Services Operated by Private Entities”
18 (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for
19 purposes of this title was:

20 (7) PUBLIC ACCOMMODATION - The following private
21 entities are considered public accommodations for purposes of this
22 title, if the operations of such entities affect commerce -

23 . . .

24 (B) *** other establishment serving food or drink;

25 (E) *** other sales or rental establishment;

26 (F) ***gas station ***.

27 42 U.S.C. §12181(7)(B)(E).

28 32. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated
against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
privileges, advantages, or accommodations of any place of public accommodation by any person
who owns, leases, or leases to, or operates a place of public accommodation.”

1 33. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
2 42 U.S.C. §12182(b)(2)(a) are:

3 (i) the imposition or application of eligibility criteria
4 that screen out or tend to screen out an individual with a disability
5 or any class of individuals with disabilities from fully and equally
6 enjoying any goods, services, facilities, privileges, advantages, or
7 accommodations, unless such criteria can be shown to be
8 necessary for the provision of the goods, services, facilities,
9 privileges, advantages, or accommodations being offered;

10 (ii) a failure to make reasonable modifications in
11 policies, practices, or procedures, when such modifications are
12 necessary to afford such goods, services, facilities, privileges,
13 advantages or accommodations to individuals with disabilities,
14 unless the entity can demonstrate that making such modifications
15 would fundamentally alter the nature of such goods, services,
16 facilities, privileges, advantages, or accommodations;

17 (iii) a failure to take such steps as may be necessary to
18 ensure that no individual with a disability is excluded, denied
19 services, segregated or otherwise treated differently than other
20 individuals because of the absence of auxiliary aids and services,
21 unless the entity can demonstrate that taking such steps would
22 fundamentally alter the nature of the good, service, facility,
23 privilege, advantage, or accommodation being offered or would
24 result in an undue burden;

25 (iv) a failure to remove architectural barriers, and
26 communication barriers that are structural in nature, in existing
27 facilities . . . where such removal is readily achievable; and

28 (v) where an entity can demonstrate that the removal of
a barrier under clause (iv) is not readily achievable, a failure to
make such goods, services, facilities, privileges, advantages or
accommodations available through alternative methods if such
methods are readily achievable.

The acts of Defendant set forth herein were a violation of plaintiff's rights under the ADA, 42.

U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §
4101:1-11, *et sec.*, making available damage remedies.

34. The removal of the barriers complained of by plaintiff as hereinabove alleged
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 12

1 was at all times after January 26, 1992 “readily achievable” as to the subject MARATHON gas
2 station and convenience store pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information
3 and belief, if the removal of all the barriers complained of herein together was not “readily
4 achievable,” the removal of each individual barrier complained of herein was “readily
5 achievable.” On information and belief, Defendant’s failure to remove said barriers was likewise
6 due to discriminatory practices, procedures and eligibility criteria, as defined by §302(b)(2)(a)(i)-
7 (iii); 42 U.S.C. §12182 (b)(2)(A)(i).
8

9 35. Per §301(9), 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
10 accomplishable and able to be carried out without much difficulty or expense.” The statute
11 defines relative “expense” in part in relation to the total financial resources of the entities
12 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
13 plaintiff complains of herein were and are “readily achievable” by the Defendant under the
14 standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not
15 “readily achievable” for Defendant to remove each of such barriers, Defendant has failed to
16 make the required services available through alternative methods which were readily achievable.
17

18 36. On information and belief, construction work on, and modifications of, the
19 subject MARATHON gas station and convenience store occurred after the compliance date for
20 the Americans with Disabilities Act, January 26, 1992, independently triggering access
21 requirements under Title III of the ADA.
22

23 37. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
24 *seq.*, §308, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil
25 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on
26 the basis of disability in violation of this title or has reasonable grounds for believing that he
27
28

1 is about to be subjected to discrimination in violation of §302. Plaintiff cannot return to or make
2 use of the public facilities complained of herein so long as the premises and Defendant's policies
3 bar full and equal use by persons with physical disabilities.

4
5 38. Per §308(a)(1) (42 U.S.C. 12188), "Nothing in this section shall require a person
6 with a disability to engage in a futile gesture if such person has actual notice that a person or
7 organization covered by this title does not intend to comply with its provisions." Pursuant to this
8 last section, plaintiff has not returned to Defendant's premises since on or about May 19, 2020,
9 but alleges that Defendant has continued to violate the law and deny the rights of plaintiff and of
10 other persons with physical disabilities to access this public accommodation. Pursuant to
11 §308(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . . injunctive relief shall include an
12 order to alter facilities to make such facilities readily accessible to and usable by individuals with
13 disabilities to the extent required by this title."

14
15 39. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
16 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
17 the Americans with Disabilities Act of 1990, including but not limited to an order granting
18 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being
19 deemed to be the prevailing party.
20

21 40. Plaintiff seeks damages pursuant to Ohio Revised Code § 4112.02, *et seq.* and Ohio
22 Administrative Code § 4101:1-11, *et sec.*, which provide, within the statutory scheme, that a
23 violation of the ADA and/or Ohio's accessibility standards is a violation of Ohio law.
24

25 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

26 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
27 **IN VIOLATION OF OHIO REVISED CODE § 4112.02, *et seq.***

28 41. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 14

1 the allegations contained in paragraphs 1 through 40 of this complaint.

2 42. At all times relevant to this action, Ohio Revised Code § 4112.0254 has provided
3 that persons with physical disabilities are not to be discriminated against because of physical
4 handicap or disability. This section provides that:
5

6 It shall be an unlawful discriminatory practice:

7 (G) For any proprietor or any employee, keeper, or manager of a place of
8 public accommodation to deny to any person, except for reasons
9 applicable alike to all persons regardless of race, color, religion, sex,
10 military status, national origin, disability, age, or ancestry, the full
enjoyment of the accommodations, advantages, facilities, or privileges of
the place of public accommodation.

11 43. MARATHON gas station and convenience store is a “place of public accommodation”
12 pursuant to Ohio Revised Code § 4112.01(A)(9).
13

14 44. Defendant committed an unlawful act pursuant to Ohio Revised Code §4112.02(G)
15 by denying plaintiff the full enjoyment of its accommodations, advantages, facilities, or
16 privileges, whereas, plaintiff had great difficulty due to extensive barriers for patrons confined to
17 wheelchairs.

18 45. Pursuant to Ohio Revised Code § 4112.99, plaintiff is entitled to compensatory
19 and punitive damages, and attorney fees and costs, in an amount to be determined at trial, but in
20 any event not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to
21 allow full and equal enjoyment of its goods, services, facilities, privileges, and advantages to
22 disabled persons.
23

24 46. A separate act in violation of Ohio Revised Code § 4112.02(G) has been committed
25 each day that Defendant acts or fail to act and/or knowingly and willfully fails and refuse to
26 remove each architectural barrier or policy and procedure barrier presently existing at the subject
27 public accommodation which denies full and equal access for persons with physical disabilities
28 COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 15

1 to said building(s), elements and facilities of MARATHON gas station and convenience store.

2 Plaintiff has been denied full and equal access on an ongoing basis since the date of his first visit.

3 As a legal result, plaintiff is entitled to seek appropriate relief, such as damages, pursuant to Ohio

4 Revised Code § 4112.99.

5
6 47. On or about May 19, 2020, plaintiff suffered violations of Ohio Revised Code
7 §4112.02(G) in that he was denied access to the facilities as stated herein at MARATHON gas
8 station and convenience store and on the basis that he was a person with physical disabilities.

9 48. As a result of the denial of equal access to Defendant's facility due to the acts
10 and omissions of Defendant in owning, operating and maintaining the subject public facility,
11 plaintiff suffered violations of his civil rights, as well as suffering from personal injury, shame,
12 humiliation, embarrassment, frustration, anger, chagrin, disappointment and worry, all of which
13 are expectedly and naturally associated with a denial of access to a person with physical
14 disabilities, all to plaintiff's damages as hereinafter stated.

15
16 49. Plaintiff has been damaged by Defendant's wrongful conduct and seeks the relief
17 that is afforded by Ohio Revised Code § 4112 for violation of his rights, including statutory
18 damages according to proof.

19
20 50. As a result of Defendant's acts and omissions in this regard, plaintiff has been
21 required to incur legal expenses and hire attorneys in order to enforce his rights and
22 enforce the provisions of the law protecting access for persons with physical disabilities and
23 prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions
24 of Ohio Revised Code § 4112, plaintiff therefore will seek recovery in this lawsuit for all
25 reasonable attorneys' fees and costs incurred if deemed the prevailing party.

26
27 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

1 **III. THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
2 **IN VIOLATION OF OHIO ADMINISTRATIVE CODE § 4101:1-11, *et seq.***

3 51. Plaintiff repleads and incorporate by reference as if fully set forth again herein,
4 the allegations contained in paragraphs 1 through 50 of this complaint.

5 52. Ohio Administrative Code (hereinafter “O.A.C.”) § 4101:1-11 controls the design and
6 construction of facilities for accessibility for individuals with disabilities.

7
8 53. Sites, buildings, structures, facilities, elements and spaces, temporary or
9 permanent, shall be accessible to individuals with disabilities. O.A.C. § 1103.1.

10 54. MARATHON gas station and convenience store, being a site, building, structure,
11 facility, element or space, committed an unlawful act pursuant to O.A.C. § 1103.1 by failing to
12 provide an accessible facility to individuals with disabilities due to the barriers to access as
13 described in this Complaint.
14

15 55. Defendant’s violations denied plaintiff his full enjoyment of its accommodations,
16 advantages, facilities, or privileges, whereas, plaintiff had great difficulty utilizing the property
17 due to extensive barriers for patrons confined to wheelchairs.

18 56. As a result of these violations, plaintiff is entitled to compensatory and punitive
19 damages, and attorney fees and costs, in an amount to be determined at trial, but in any event
20 not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to allow full
21 and equal enjoyment of its goods, services, facilities, privileges, and advantages to disabled
22 persons.
23

24 57. As a result of Defendant’s accessibility violations, plaintiff suffered violations of his
25 civil rights, as well as suffering from personal injury, shame, humiliation, embarrassment,
26 frustration, anger, chagrin, disappointment and worry, all of which are expectedly and naturally
27 associated with a denial of access to a person with physical disabilities, all to plaintiffs’ damages
28
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 17

1 as hereinafter stated.

2 58. Plaintiff has been damaged by Defendant's wrongful conduct and seeks relief
3 for violation of the O.A.C., including actual and special damages, according to proof.
4

5 59. As a result of Defendant's acts and omissions in this regard, plaintiff has been
6 required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and
7 enforce the provisions of the law protecting access for persons with physical disabilities and
8 prohibiting discrimination against persons with physical disabilities. Plaintiff therefore will seek
9 recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the
10 prevailing party.
11

12 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

13 **O.R.C. 4112.16 NOTICE OF VIOLATION OF ACCESSIBILITY LAW**

14 60. Pursuant to O.R.C. 4112.16 Notice of Violation of Accessibility Law, prior to
15 filing a civil action alleging violation of State of Ohio accessibility law, the alleged aggrieved
16 party may notify the owner, agent, or other responsible party, by personal service or by certified
17 mail, of alleged accessibility law violations.
18

19 61. On July 13, 2020, MORTLAND served upon Defendant's statutory agent a Notice of
20 Violation of Accessibility Law pursuant to O.R.C. 4112.16.

21 62. Defendant's statutory response deadline in which to serve MORTLAND with its
22 response was August 3, 2020.
23

24 63. Defendant failed to serve a response upon MORTLAND or his counsel within 15
25 days of receiving the O.R.C. 4112.16 Notice.

26 64. Due to Defendant's failure to respond in accordance with the statute, MORTLAND
27 may commence his lawsuit for violations of State of Ohio accessibility laws.
28

1 65. Due to Defendant's failure to respond in accordance with the statute, MORTLAND,
2 if deemed the prevailing party, shall recover reasonable attorney's fees, in addition to any other
3 remedies available to the plaintiff.
4

5 Wherefore, Plaintiff DEREK MORTLAND prays for relief and damages as hereinafter
6 stated.

7 **PRAYER:**

8 Wherefore, Plaintiff DEREK MORTLAND prays that this court grant relief and damages
9 as follows:
10

11 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
12 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)

13 1. For injunctive relief, compelling Defendant to make MARATHON gas station
14 and convenience store, readily accessible to and usable by individuals with disabilities; and to
15 make reasonable modifications in policies, practice, eligibility criteria and procedures so as to
16 afford full access to the goods, services, facilities, privileges, advantages and accommodations
17 being offered.
18

19 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed
20 the prevailing party; and
21

22 3. For such other and further relief as the court may deem proper.

23 **I. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
24 **EQUAL ACCESS IN VIOLATION OF OHIO REVISED CODE § 4112.02, et**
seq.

25 4. For injunctive relief, compelling Defendant to make MARATHON gas station
26 and convenience store, readily accessible to and usable by individuals with disabilities, per state
27 law.
28

1 5. General and compensatory damages according to proof;

2 6. All damages for each day, from the inception of the filing of this complaint, on
3 which Defendant have failed to remove barriers which denied plaintiff and other persons with
4 disabilities full and equal access.
5

6 7. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed
7 the prevailing party;

8 8. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

9 9. For all costs of suit;

10 10. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

11 11. Such other and further relief as the court may deem just and proper.
12

13 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND**
14 **EQUAL ACCESS IN VIOLATION OF OHIO ADMINISTRATIVE CODE §**
15 **4101:1-11, *et seq.***

16 12. For injunctive relief, compelling Defendant to make MARATHON gas station
17 and convenience store readily accessible to and usable by individuals with disabilities, per state
18 law.

19 13. General and compensatory damages according to proof;

20 14. All damages for each day, from the inception of the filing of this complaint, on
21 which Defendant have failed to remove barriers which denied plaintiffs and other persons with
22 disabilities full and equal access.
23

24 15. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed
25 the prevailing party;

26 16. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

27 17. For all costs of suit;
28

1 18. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

2 19. Such other and further relief as the court may deem just and proper.

3 Respectfully submitted,

4 BLAKEMORE, MEEKER & BOWLER CO., L.P.A.

5 /s/ COLIN G. MEEKER

6 COLIN G. MEEKER (Ohio Bar No. 0092980)

7 495 Portage Lakes Dr.

8 Akron, Ohio 44319

9 Telephone: (330) 253-3337

10 Facsimile: (330) 253-4131

11 cgm@bmblaw.com

12 Attorney for Plaintiff DEREK MORTLAND